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269 NLRB No. 193

D--1648
East Canton, OH

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

CANTON TOOL MANUFACTURING CORPORATION

and

Case 8--CA--17251

LOCAL LODGE 22 OF DISTRICT LODGE 28,
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AFL--CIO

DECISION AND ORDER

Upon a charge filed by the Union 22 December 1983, the General Counsel of the National Labor Relations Board issued a complaint 31 January 1984 against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) and Section 8(d) of the National Labor Relations Act. Although properly served copies of the charge, the amended charge, and complaint, the Company has failed to file an answer.

On 12 March 1984 the General Counsel filed a Motion for Summary Judgment. On 16 March 1984 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Company filed no response.[1] The allegations in the motion are therefore undisputed.

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[1] On 6 April 1984 the General Counsel filed a ''Motion for Expedited Consideration of Motion for Summary Judgment.''

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.[2]

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 10 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 10 days of service, "all the allegations in the Complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that about 14 February 1984 the General Counsel notified the Company's attorney that no answer had been filed. On the Company's request the deadline for filing an answer was extended to the close of business 24 February 1984. The deadline was reconfirmed by the General Counsel in a letter dated 23 February 1984. On 29 February 1984 the Respondent was informed by telephone that if no answer was filed by close of business 2 March 1984 a Motion for Summary Judgment would be filed. Because the Regional Office was closed due to inclement weather on 28 and 29 February,on 1 March the Respondent was informed by telephone and letter that filing of the Summary Judgment Motion would be delayed until 2 March 1984.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

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[2] Chairman Dotson relies only on the default aspects of this case and notes that it possesses no precedential value.

Findings of Fact

I. Jurisdiction

The Company, an Ohio corporation, is engaged in the manufacture of subcontract machinery, special machinery, and metal-working at its facility in East Canton, Ohio. During the 12 months preceding the complaint, it sold and shipped from its Canton, Ohio facility goods, products, and materials valued in excess of $50,000 directly to points outside the State of Ohio. We find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

At all times material Joseph Fedevich, the Company's president, and Kenneth Cable, the Company's plant manager, have been supervisors within the meaning of Section 2(11) of the Act and agents of the Company within the meaning of Section 2(13) of the Act.

Since 6 September 1974 the Union has been the designated, exclusive collective-bargaining representative of an appropriate bargaining unit composed of all production and maintenance employees at the Company's facility in East Canton, Ohio. Since that date the Union has also been recognized as collective-bargaining representative and its recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms from 1 August 1982 to 1 August 1985.

Since about July 1983 the Company has failed to continue in full force and effect all the terms and conditions of the bargaining agreement by discontinuing paid holidays and paid vacations, by refusing to pay overtime to a unit employee, by ceasing to provide insurance benefits for unit employees, and by failing and refusing to answer and meet on grievances. The terms of the

agreement the Company has failed to observe cover mandatory subjects of bargaining. By this conduct, and by engaging in such conduct without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the Company's employees, the Company has failed and refused to bargain in good faith with its employees' representative, and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 8(d) of the Act.

About 29 December 1983 the Company, through its agent, Supervisor Joseph Fedevich, sent a letter threatening that the Company would go out of business if the charge filed by the Union were not withdrawn. By such letter the Company interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them by Section 7 and has thereby engaged in an unfair labor practice within the meaning of Section 8(a)(1) of the Act.

Conclusions of Law

1. By discontinuing paid holidays and paid vacations, by refusing to pay overtime, by failing to provide insurance benefits, and by refusing and failing to answer and meet on grievances as required by the collective-bargaining agreement since about July 1983, the Company has engaged in unfair labor practices within the meaning of Section 8(a)(5) and Section 8(d) of the Act.

2. By its refusal to bargain as described above, and by threatening to go out of business if the NLRB charges were not withdrawn, the Company has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act, and thereby has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We have found that the Respondent, in violation of Section 8(a)(1) and (5) and Section 8(d) of the Act, failed to abide by certain provisions of the applicable collective-bargaining agreement. To remedy this violation, we shall order the Respondent to honor the agreement's provisions and to make its employees whole by paying vacations, holidays, overtime, and insurance benefits the agreement requires retroactive to July 1983 and by reimbursing its employees for any expenses ensuing from the Respondent's unlawful failure to pay such required payments as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). All payments to employees shall be made with interest as prescribed in Florida Steel Corp., 231 NLRB 651 (1977). See generally Isis Plumbing Co., 138 NLRB 716 (1962).[3]

ORDER

The National Labor Relations Board orders that the Respondent, Canton Tool Manufacturing Corporation, East Canton, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with Local Lodge 22 of District Lodge 28, International Association of Machinists and Aerospace Workers, AFL--CIO, by failing to make benefit payments and answer and meet on grievances as required by the applicable collective-bargaining agreement.

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[3] Because the provisions of employee benefit fund agreements are variable and complex, the Board does not provide at the adjudicatory stage of a proceeding for the addition of interest at a fixed rate on unlawfully (continued)

(b) Threatening to go out of business if NLRB charges are not withdrawn.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor and abide by the terms and conditions of employment provided for in the collective-bargaining agreement with Local Lodge 22 of District Lodge 28, International Association of Machinists and Aerospace Workers, AFL--CIO.

(b) Make whole its employees by making the benefit payments it should have made pursuant to the collective-bargaining agreement retroactive to July 1983 and by reimbursing unit employees for any expenses ensuing from the Respondent's unlawful failure to make such required payments, in the manner set forth in the section of this decision entitled ''Remedy.''

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

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[3] withheld fund payments. We leave to the compliance stage the question of whether the Respondent must pay any additional insurance benefits in order to satisfy our ''made-whole'' remedy. These additional amounts may be determined, depending on the circumstances of each case, by reference to the provisions in the documents governing the fund at issue and, where there are no governing provisions, to evidence of any loss directly attributable to the unlawful withholding action, which might include the loss of return on investment of the portion of funds withheld, additional administrative costs, etc., but not collateral losses. See Merryweather Optical Co., 240 NLRB 1213 (1979).

(d) Post at its East Canton, Ohio place of business copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. 20 April 1984

Donald L. Dotson, Chairman

Don A. Zimmerman, Member

Robert P. Hunter, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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[4] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local Lodge 22 of District Lodge 28, International Association of Machinists and Aerospace Workers, AFL--CIO, as the exclusive representative of the production and maintenance employees at our East Canton, Ohio plant, by failing to make benefit payments required by the applicable collective-bargaining agreement between us and the Union.

WE WILL NOT threaten to go out of business if NLRB charges are not withdrawn.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor and abide by the terms and conditions of employment provided for in the collective-bargaining agreement with the Union. The appropriate unit for the purpose of collective bargaining is:

All employees in our East Canton, Ohio plant.

WE WILL make whole our employees by making the benefit payments we should have made under the collective-bargaining agreement since July 1983 and by reimbursing unit employees, plus interest, for any expenses ensuing from our unlawful failure to make such required payments.

CANTON TOOL MANUFACTURING
CORPORATION

(Employer)

Dated ---------- By ----------
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Anthony J. Celebrezze Federal Building, 1240 E. 9th Street, Room 1695, Cleveland, Ohio 44199, Telephone 216--522--3733.